

MEMORANDUM OF LAW

DATE: July 31, 1991

TO: Severo Esquivel, Deputy City Manager

FROM: City Attorney

SUBJECT: Applicability of Section 970 of California Labor Code to the City of San Diego

In a memorandum dated July 11, 1991, you inquired if Chapter 2, Part 3, Division 2 of the California Labor Code applied to the City of San Diego. You were particularly concerned over Sections 970 and 971, which grant employment applicants certain protections against acts of intentional misrepresentation by future employers.

Sections 970 and 971 address the remedies for acts of misrepresentation by persons or agents who entice individuals to change residency in pursuit of employment but neither section makes any reference to public agencies. In fact, the term "person" or "agent" is used exclusively throughout Chapter 2 and no reference is made at all to public agencies.

The general rule is that, absent a clear legislative intent, the provisions of a statute do not apply to a public agency unless expressly stated or if there is no infringement upon the public agency's sovereign power. *City of Los Angeles v. City of San Fernando*, 14 Cal.3d 199 (1975). Article XI section 5(b) of the California Constitution grants to a charter city plenary power to appoint employees subject only to the provisions of its charter. We therefore believe that Sections 970 and 971 do not apply to the City of San Diego.

If you have any further questions in this regard, please contact me.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Chief Deputy City Attorney

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